

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION
AND IS NOT BINDING PRECEDENT OF THE BOARD**

Filed by:
APJ James T. Moore
Mail Stop INTERFERENCE
Board of Patent Appeals and Interferences, USPTO
P.O. Box 1450
Alexandria, Virginia 22313-1450

Paper 183

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

APPLIED RESEARCH SYSTEMS ARS HOLDING, N.V.
Junior Party
(Patent 5,272,071)

v.

CELL GENESYS, INC.
Junior Party,
(Application 08/102,390)¹

Patent Interference No. 105,114

Decision on Order to Show Cause

MOORE, Administrative Patent Judge.

Cell Genesys was placed under an order to show cause (Paper 176) for failing to comply with the notification requirements of former Bd R. 660(d) and (e)(2004).

¹ Both parties were accorded junior party status (See Paper 1).

Cell Genesys responded with papers 179-183, which include its response to the order to show cause along with evidence in support thereof. Cell Genesys urges that holding its application to have been abandoned would be a heavy sanction.

A teleconference was conducted with counsel for the parties on January 4, 2007. The Board expressed its dissatisfaction with the evidence in papers 179-183. During the conference call, Mr. Kelber, counsel for Cell Genesys, was directly asked if he had properly delivered a copy of the complaint to the Board and served it on opposing counsel. He stated that he had. Based upon that unequivocal statement, and no contrary information from opposing counsel as to that statement, no sanction will be levied against Cell Genesys.

It appears that all prosecution activity following the date of final judgment, June 24, 2004, should not have occurred, including the multiple notices of allowance. Jurisdiction over the application did not revert to the patent examining corps.

Finally, the parties are advised to promptly notify the Board separately of a change in address as required. Papers are processed by staff looking for the latest address of record in the case file without outside knowledge of counsel's whereabouts. Papers are mailed/transmitted to that address, regardless of any return address on papers filed by that counsel. See Bd. R. 108(c). If such notification is needed in this case, it should be done promptly.

Accordingly, it is hereby **ORDERED** that:

1) The status of Patent Application 08/102,390 is changed to PALM status 195, application involved in court proceedings.

2) Any action taken by the examining corps subsequent to June 24, 2004 is a nullity.

/James T. Moore/
Administrative Patent Judge

By email:

Counsel for APPLIED RESEARCH SYSTEMS ARS HOLDINGS N.V.:

Charles L. Gholz, Esq.
OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
Alexandria, Virginia 22314
cgholz@oblon.com

Counsel for CELL GENESYS, INC.:

Steven B. Kelber, Esq.
The Kelber Law Group
1875 Eye Street NW, Fifth Floor, Suite 500
Washington DC 20006
SBKelber@aol.com